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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,515	10/29/2003	Ahmad Akashe	77012	6360
48940 7590 02/27/2007 FITCH EVEN TABIN & FLANNERY 120 S. LASALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			EXAMINER PADEN, CAROLYN A	
			ART UNIT 1761	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	
3 MONTHS			02/27/2007	
			DELIVERY MODE PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/696,515

Applicant(s)

AKASHE ET AL.

Examiner

Carolyn A. Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (4,415,596) alone or if necessary in view of Candy for reasons of record.

Applicant argues that Anderson does not contain the levels of protein required in the claims. But soy albumin is a protein and the protein content suggested in Anderson is within the range of the claims (column 2, lines 61-68). Applicant argues that Anderson does not disclose that the off flavors of soybean are omitted in his product. This argument has been considered but is not persuasive. At column 2, lines 53-60 the superior flavor of the product is discussed, in spite of the fact that vegetable proteins are included in the composition. No unobvious or unexpected difference is seen between the product of the claims and the product in Anderson. With regard to claim 2, soy albumin is regarded as a soy protein isolate and a soy concentrate.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rash in view of Yang and further in view of Candy.

Rash discloses confection or candy mixes with high levels of solubilized protein. In example 1, caramel type candy is made. The ingredients of Example 1 are mixed and include vegetable oil, which is examiner is interpreting to be soybean oil, soybean flour, corn syrup, water and other ingredients. In this case vegetable oil and soybean flour together are taking to be soy-containing material. The mixture is heated to 227F for 30 minutes. Candy, at page 10, teaches that this temperature is sufficient to caramelize the sugar in the composition. Then the product is cooled to create a chewable candy product. The claims appear to differ from Rash in the recitation of the extent of soy protein in the product. Rash includes high levels of protein but it is no soy protein. Yang is relied upon to draw equivalent between various kinds of proteins. Yang teaches chewy confectionery delivery systems. In example 1 the product is made from sugar, water, sweetened condensed skim milk and cocoa butter. The ingredients are mixed, emulsified and heated to 245-246F to form a caramel base. Then chocolate is added, the product is cooled, formed, coated and wrapped. The ingredients of this formulation are shown in

Table 1. The concept of substituting soy protein for milk protein in the confectionery is disclosed at column 7, lines 25-33. Given the teachings of substituting soy protein for milk protein in caramel confectioneries, it would have been obvious to substitute soy protein for the whey protein in Rash to provide for a soy-based confectionery. Applicant argues that Rash does not teach heating conditions sufficient to caramelize the sugar and points to Candy for support of this assertion. But the high temperatures referred to in Candy are for glazes and coatings and not to caramel candy, which is treated at a lower temperature in the figure on page 10. The aspect of the flavor of the product is seen to be an obvious result of the preparation of caramel, which is a flavor as well as a confectionery.

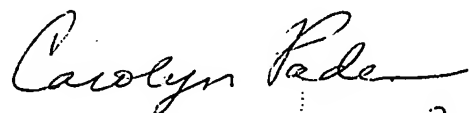
No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or

by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CAROLYN PADEN  
PRIMARY EXAMINER

2-22-07  
1761